

**FISH AND WILDLIFE SERVICE  
ADMINISTRATIVE PROCEDURE**

**Administrative Procedure**

**Part 202 The Federal Register**

**Chapter 1 Purpose, Responsibility, and Definitions**

**202 FW 1**

**1.1 What is the purpose of this chapter?** This chapter is one of four chapters in part 202, which describes policies and procedures for preparing and issuing Federal Register documents.

**A.** Chapter 1, Purpose, Responsibility, and Definitions, provides basic information on:

- (1)** Legal authorities,
- (2)** Service responsibilities, and
- (3)** Definitions of terms used in all four chapters.

**B.** Chapter 2, Preparation, provides guidance on preparing for rulemaking.

**C.** Chapter 3, Composition and Content of Rules and Notices, expands on the guidance in Part 318 of the Departmental Manual (DM) and the Office of the Federal Register's Document Drafting Handbook about how to compose and write the content of a rule or notice.

**D.** Chapter 4, Clearance Procedures, establishes the procedures that program offices must follow after drafting a Federal Register document.

**1.2 What is the scope of this chapter and 202 FW 2 through 4?** This chapter and 202 FW 2 through 4 apply to the preparation of Federal Register documents (see section 1.3 below). The chapters supplement the laws, regulations, and guidelines in section 1.4, and employees should consult all appropriate guidance.

**1.3 What types of documents does the Service publish in the Federal Register?** We publish documents in the Federal Register to issue regulations and inform the public about our policies, procedures, functions, and activities. The documents we publish most commonly are:

- A.** Advance notices of proposed rulemaking.
- B.** Proposed rules.
- C.** Interim rules.
- D.** Emergency rules.
- E.** Final rules.
- F.** Notices.

**1.4 What are the authorities for this chapter?**

**A.** The Federal Register Act (FRA) (44 U.S.C., Chapter 15). (For details of the basic requirements of the FRA, see Exhibit 1.)

**B.** The Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.). (For details of the basic requirements of section 553, which is the section on informal rulemaking, see Exhibit 1.)

**C.** Congressional Review Act (CRA) (Public Law 104–121). (For basic information about the CRA, see Exhibit 1.)

**D.** 318 DM, Federal Register Documents.

**FISH AND WILDLIFE SERVICE  
ADMINISTRATIVE PROCEDURE**

**Administrative Procedure**

**Part 202 The Federal Register**

**Chapter 1 Purpose, Responsibility, and Definitions**

**202 FW 1**

E. Title 1 of the Code of Federal Regulations (CFR), parts 18, 21, 22, and 51.

F. Office of the Federal Register (OFR) Document Drafting Handbook (DDH).

G. Executive Order (E.O.) 12866, Regulatory Planning and Review. (For basic information about E.O. 12866, see Exhibit 1.)

H. Government Printing Office Style Manual.

I. 116 FW 1, Plain Language in Fish and Wildlife Service Documents.

**1.5 Who is responsible for Federal Register publication?**

**A. The Assistant Secretary for Fish and Wildlife and Parks (A/S)** or a designee is the only person with the authority to issue (sign) rulemaking documents for the Service, except for those documents described in section 1.5B(5) of this chapter. The A/S also signs most major policy documents that we publish in the Federal Register.

**B. The Director:**

(1) Ensures that we write rules that are clear and easy for the public to understand.

(2) Ensures that we develop rules and get approval according to the criteria and procedures in 318 DM and this Service Manual part.

(3) Ensures that we prepare regulatory analysis documents when required.

(4) Requires the Chief, Division of Policy and Directives Management (PDM) to designate two employees to serve as principal and alternate Federal Register Liaison Officers.

(5) May sign rulemaking documents that pertain to adding, removing, or reclassifying species on the Lists of Threatened and Endangered Wildlife and Plants in 50 CFR 17.

**C. The Assistant Director - Budget, Planning and Human Resources** oversees the administration of the Federal Register document development and clearance process.

**D. The Chief, Division of Policy and Directives Management:**

(1) Provides employees to administer the Federal Register document publication process. Two employees serve as principal and alternate Federal Register Liaison and certifying officers.

(2) Is the point of contact for the OFR and the Department of the Interior's (DOI) Office of the Executive Secretariat and Regulatory Affairs (OES) on all matters related to Federal Register documents.

(3) Advises and assists employees preparing and issuing Federal Register documents.

(4) Reviews Federal Register documents for compliance with 318 DM, OFR's style and format requirements, and the many statutes and Executive Orders that govern the rulemaking process.

(5) Prepares required reports and forecasts related to rulemaking.

**E. The Regional Director, California/Nevada Operations Office (CNO) Manager, Assistant Regional Director**, or designee:

(1) Determines the need for a rulemaking action.

**FISH AND WILDLIFE SERVICE  
ADMINISTRATIVE PROCEDURE**

**Administrative Procedure**

**Part 202 The Federal Register**

**Chapter 1 Purpose, Responsibility, and Definitions**

**202 FW 1**

(2) Conducts the first review of Federal Register rule packages before sending them to the Washington Office. This review ensures readability and compliance with the rulemaking requirements.

(3) Signs Federal Register notices or delegates signature authority to field managers.

**1.6 What terms do you need to know to understand 202 FW 1 through 4?**

**A. Advance Notice of Proposed Rulemaking (ANPRM).** We may choose to publish an advance notice of proposed rulemaking if we have only a general idea of the direction we want to follow for an agency action. We may describe the general idea and then ask questions for the public to answer. After we consider the public comments we receive and decide a course of action, we may then publish a proposed rule.

**B. Certified copy (of a Federal Register document).** A certified copy is a photocopy of the original document on which the certifying officer puts the following statement at the bottom of the signature page on each copy and signs it: "Certified to be a true copy of the original." The same person who writes the disk verification or cover letter for a Federal Register document may also certify the copies of that document.

**C. Code of Federal Regulations (CFR).** The CFR is the basic component of the Federal Register publication system. The CFR is a codification of the regulations Federal agencies publish in the Federal Register. The CFR is revised annually. Together, the Federal Register and the CFR provide the current version of all Federal regulations. A daily update of the CFR is available in print and [online](#).

**D. Direct final rule.** A direct final rule (DFR) is a final rule that is not preceded by a proposed rule. We may want to publish a DFR for routine or noncontroversial regulations that we believe will not generate adverse comment. A DFR becomes effective on a specific future date unless we receive any adverse comments on the rule within a specified comment period before that date. If we receive any adverse comments during the DFR's public comment period, we must withdraw the DFR before its effective date and publish the rule as a proposed rule.

**E. Emergency rule.** Certain legislation, such as the Endangered Species Act (ESA), includes provisions for the publication of emergency rules. The ESA, for example, allows us to publish emergency rules to protect species in imminent danger of extinction. An emergency rule under the ESA is effective for 240 days, during which time we may engage in informal rulemaking to provide more permanent protection for the species.

**F. Final rule.** A final rule is generally the second (and last) step in informal rulemaking. In a final rule, we address the comments we received on the proposed rule and issue the actual rule language that we will incorporate in the CFR. Final rules have the force of law.

**G. Formal review.** If OMB designates that a formal review is necessary, it means that OMB must review the rule under the parameters established in E.O. 12866. Significant rules generally undergo formal review.

**H. Formal rulemaking.** Formal rulemaking is a type of rulemaking in which the agency, by statute, may issue a rule only after an opportunity for a "hearing on the record." The agency must conduct a hearing according to the formal hearing provisions of the APA (5 U.S.C. 556–557). We do not engage in formal rulemaking.

**I. Informal review.** If OMB designates that an informal review is necessary, it means that OMB wants us to e-mail a copy of the rule to them. They generally will conduct the review within 10 days. OMB might make informal comments to the program office about the rule.

**FISH AND WILDLIFE SERVICE  
ADMINISTRATIVE PROCEDURE**

**Administrative Procedure**

**Part 202 The Federal Register**

**Chapter 1 Purpose, Responsibility, and Definitions**

**202 FW 1**

**J. Informal rulemaking.** Informal rulemaking, also called “notice-and-comment rulemaking,” is the rulemaking process described in section 553 of the APA. The vast majority of Federal regulations are issued using this process. The informal rulemaking process is intended to be a legislative-like process in which the rulemaker, like a legislator, gives the public an opportunity to influence the making of a regulatory decision. Under the APA, any “interested person” may submit comments. In its simplest form, informal rulemaking involves:

- (1) Publishing a proposed rule in the Federal Register,
- (2) Inviting public comment,
- (3) Considering public comment, and
- (4) Publishing a final rule in the Federal Register.

**K. Interim rule.** An interim rule has the force and effect of a final rule and is published without publication of a proposed rule. The APA allows us to publish interim rules when “for good cause” we determine that publication of a proposed rule is unnecessary and contrary to the public interest (5 U.S.C. 553 (b)(3)(B)). We solicit comments on the interim rule and then follow up with publication of a final rule that may or may not differ from the interim rule.

**L. Nonsignificant rule.** A nonsignificant rule is a rulemaking action that will cause an impact that is less than significant as defined under E.O. 12866 (see Significant rule). Nonsignificant rules do not meet any of the four parameters of significance in E.O. 12866. OMB does not conduct formal reviews of nonsignificant rules.

**M. Notice.** Federal agencies publish notices in the Federal Register to advise the public of information or an event. We can publish, as a notice, material that is not regulatory or procedural and does not set requirements. Typical notices include notices of hearings and meetings, notices of the availability of documents, notices of receipt or issuance of permit applications, information collections, and deadlines for grant applications. We may also publish notices to seek public comment on proposed policy documents (see 011 FW 3.5B). Notices publish in the Notices section of the Federal Register.

**N. Proposed rule.** A proposed rule is generally the first step in informal rulemaking. In this document, we establish the rule under consideration, describe the reason for it, and ask the public to comment. This is also sometimes called a Notice of Proposed Rulemaking (NPRM), but it is not a notice. Proposed rules publish in the Proposed Rules section of the Federal Register.

**O. Record of compliance (ROC).** DOI requires the bureaus (318 DM 3) to prepare a ROC for each rule. The ROC states how we complied with the requirements governing the rulemaking process. Generally, we can use the ROC we prepared for a proposed rule for the final rule too, unless supporting data change significantly between the time we prepared the proposed and final rules.

**P. Regulation or rule.** In 1 CFR 1.1, E.O. 12866, and the OFR Document Drafting Handbook, “regulation” and “rule” have generally the same meaning. We promulgate a regulation, as authorized or required by law. A regulation is a requirement or set of requirements that has general applicability and future effect and which we intend to have the force and effect of law. More specifically, however, a regulation is what appears in the CFR. A rule or rulemaking is the Federal Register document that includes both preamble and regulatory text. The rule puts the regulation into context. The rulemaking also enables the regulatory text to be incorporated into the CFR. Rules publish in the Rules and Regulations section of the Federal Register.

FISH AND WILDLIFE SERVICE  
ADMINISTRATIVE PROCEDURE

Administrative Procedure

Part 202 The Federal Register

Chapter 1 Purpose, Responsibility, and Definitions

202 FW 1

**Q. Regulatory Action Alert form.** This form, required by the Department, describes a rulemaking action, any possible controversy or sensitivity, and the anticipated publication date. Its purpose is to provide information to other bureaus so they can decide if they want to participate in the development of the rule.

**R. Regulation Identifier Number (RIN).** A RIN is a unique number that the Regulatory Information Service Center of the General Services Administration (GSA) assigns and that is used for all stages of a rulemaking. PDM gets the RIN from GSA. For a single rulemaking action, several documents will have the same RIN. For example, a proposed rule, a notice of the availability of documents pertinent to the proposed rule, a notice of a public meeting about the proposed rule, and the final rule will all have the same RIN. See Proposed rule, section 1.6N.

**S. Regulatory Plan.** We publish the Regulatory Plan each year as part of the fall Unified Agenda. The Regulatory Plan contains the most important significant regulatory actions that we reasonably expect to issue in the next 12 months. The Plan contains a statement of regulatory priorities and separate entries for each action planned. We do not include all rules in the Regulatory Plan.

**T. Semiannual agenda.** See Unified Agenda, section 1.6V.

**U. Significant rule.** E.O. 12866 defines significant rules. A rule can be significant in two ways:

(1) Economically significant: A rulemaking action that will have an annual effect on the economy of \$100 million or more or will adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities. All economically significant rulemaking actions should appear in our Regulatory Plan.

(2) Other than economically significant: A rulemaking action that is not economically significant but that we anticipate OMB will review under E.O. 12866. We can decide whether or not to include these rules in our Regulatory Plan.

**V. Unified Agenda.** E.O. 12866 requires that all Federal regulatory agencies publish a list of anticipated rulemaking actions for the following 12-month period. The activities included in the agenda are primarily those where we plan to publish an advance notice of proposed rulemaking, proposed rule, or final rule within the next 12 months. GSA publishes the Unified Agenda twice a year, in spring and fall, and PDM submits input regarding Service rulemaking actions.

  
DEPUTY  
DIRECTOR

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